IN THE HIGH COURT OF BOMBAY AT GOA
****

FIRST APPEAL NO. 95 OF 1999

Shri Sub.R. Gopalkrishna
Gokele, Dte.General of
Signals,(1 SIT) G.S.Br.,
Army Head Quarters,
R.K. Puram, West Block.4,
New Delhi - 110066. ... Appellant.

Versus

1. The New India Assurance
Co. Ltd., Panaji, Goa,

2. Shri Harish, s/o
Chandrappa Putaran,
c/o M/s. B.N. Thakur Auto
Commerce, Panaji, Goa, and

3. M/s. B. N. Thakur Auto
Commerce, Panaji, Goa. ... Respondents.

Shri R. G. Ramani, advocate for the appellant.

Shri E. Afonso, advocate for respondent no.1.

CORAM : F. I. REBELLO, J.

DATE : 18th July, 2003.

ORAL JUDGMENT

The Appeal is directed against the Award of the Claims Tribunal dated 16th April, 1999, whereby the application filed by the appellant herein was dismissed. In the appeal on behalf of the appellant, it is contended that there was no reason for the learned Claims Tribunal to have rejected the evidence of C.W.4. Apart from that, it is pointed out that the respondent no.2 who would have been the best witnesses to establish that the accident did not take place in the manner in which the respondents have pleaded, was not examined. In these circumstances, it is contended that the order of the Claims Tribunal be set aside and the appeal

be allowed.

2. In the instant case, firstly, it is clear that C.W.4 happens to be a chance witness, not because his name was not given by the appellant as a witness, as it is always open to the appellant to produce the witness, but the manner in which he was produced. What is important is the manner in which the case is made out that the said witness was sought to be examined by the appellant as an eye-witness. The learned Claims Tribunal has given cogent reasons as to why the evidence of the said witness could not be relied upon. In my opinion, the manner in which the case is made out that the appellant chanced upon the said witness, by itself, creates suspicion about the said witness to be an eye-witness to the incident. Apart from that the inconsistencies found by the learned Claims Tribunal in the deposition of the said witness cannot be brushed off.

3. The next attack on the Award is that the respondent ought to have examined respondent no.2. In the first case the duty is cast on the claimants to establish that the accident arose on account of the rash and negligent driving, or the doctrine of res ipsa loquitur must help in establishing the claim of the claimant. In the instant case, the claimant/appellant, did not examine as witness the driver of the military vehicle, nor for that matter, the respondents, though in the Award it is disclosed that attempts were made to

summon respondent no.2. Therefore, that attack also on the approach of the learned Claims Tribunal, will have to be rejected.

4. That leaves the issue of the site panchanama. From the site panchanama, it is clear that the truck was on its right side. The learned Claims Tribunal has considered the entire evidence and discussed the issue in paragraph 10 of its Award. I find no reason to take a view different from that taken by the learned Presiding Officer of the Claims Tribunal.

In the light of that, I find no merit in this appeal, which is accordingly rejected.

F. I. REBELLO, J.

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